

BakerHostetler

Baker & Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

Heather J. McDonald
direct dial: 212.589.4285
hmcDonald@bakerlaw.com

December 17, 2013

Honorable Burton R. Lifland
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC*, Case No. 08-01789
(BRL); Claim No. 000458

Dear Judge Lifland:

We are counsel to Irving H. Picard, Trustee for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* ("SIPA"). We write in response to the December 1, 2013 letter of Laurence E. Leif requesting that this Court grant summary judgment in favor of Mr. Leif in his dispute (the "Claim Dispute") over the Trustee's determination of his SIPA allowed claim for BLMIS account no. 1L0139, designated by the Trustee as claim number 000458. See Objection to Trustee's Determination of Claim, *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC*, No. 08-01789 (BRL) (Bankr. S.D.N.Y. entered Aug. 2, 2010) [Dkt. #2825].

In his letter, Mr. Leif indicates that the Trustee has not been in contact since this Court's October 21, 2013 order (the "Mediation Referral Order") referring the Claim Dispute and the Trustee's separate avoidance action against Mr. Leif, see *Picard v. Leif*, Adv. Pro. No. 10-04601 (BRL) (Bankr. S.D.N.Y. filed Dec. 1, 2010) (the "Avoidance Action"), to joint mediation before Judge Melanie Cyganowski. In fact, however, the Trustee has been in continued contact regarding the resolution of both matters.

On October 23, 2013, Mr. Leif's attorney in the Avoidance Action, Mr. Matthew Kupillas of Milberg LLP, contacted me to discuss a possible settlement of both the Claim Dispute and the Avoidance Action and to discuss the procedures for the mediation. Mr. Kupillas stated that he had authorization from Mr. Leif to present an offer for a global

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settlement of both of the matters referred to mediation. While the Trustee was evaluating Mr. Leif's settlement offer, I exchanged multiple emails with Mr. Kupillas seeking additional information from Mr. Leif. After thorough examination of Mr. Leif's settlement offer, the Trustee presented a counteroffer to Mr. Kupillas for Mr. Leif's consideration. On December 9, 2013, Mr. Kupillas communicated Mr. Leif's rejection of this counteroffer via email.

The Trustee has fully cooperated with Mr. Leif's efforts to reach a settlement prior to moving forward with mediation, but now believes it will be necessary to attempt to resolve these matters in mediation where, pursuant to the Court's Mediation Referral Order, Judge Cyganowski will serve as mediator. We will be contacting Judge Cyganowski immediately to schedule the mediation at the earliest appropriate date. We therefore respectfully request that this Court deny Mr. Leif's request for summary judgment on the Claim Dispute and permit the parties to proceed with mediation pursuant to this Court's Mediation Referral Order.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather J. McDonald".

Heather J. McDonald

cc: Matthew A. Kupillas, Esq.
Laurence E. Leif